

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 16-2268RE
)	
MARKEL BOYD FLEMING)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about March 31, 2016, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. Markel Boyd Fleming*, No. 16-2268RE. In that Default Decision, the Administrative Hearing Commission found that Respondent Markel Boyd Fleming's real estate inactive salesperson license (license no. 1999112139) is subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2(15), (16), and (19), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the properly pled complaint and the Default Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on June 8, 2016, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the Commission were present throughout

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

the meeting. Further, each member of this Commission has read the Default Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Ross Keeling. Respondent having received proper notice and opportunity to appear did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the properly pled Complaint and the Default Decision of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Markel Boyd Fleming*, Case No. 16-2268RE, issued March 31, 2016, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent failed to appear in person or through legal counsel at the hearing before the Commission

4. This Commission licensed Respondent Markel Boyd Fleming as a real estate inactive salesperson, license number 1999112139. Respondent's inactive salesperson license

was not current at all times relevant to this proceeding. On April 4, 2015 Respondent's inactive salesperson license was suspended by operation of law pursuant to Section 324.010, RSMo.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the properly pled complaint and Default Decision issued by the Administrative Hearing Commission dated March 31, 2016, in *Missouri Real Estate Commission v. Markel Boyd Fleming*, Case No. 16-2268RE, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Default Decision dated March 31, 2016, Respondent's real estate inactive salesperson license, number 1999112139, is subject to disciplinary action by the Commission pursuant to § 339.100.2(15), (16), and (19), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

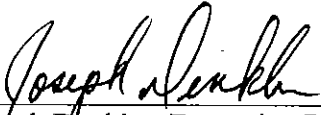
ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate inactive salesperson license of Markel Boyd Fleming (license no. 1999112139) is hereby **REVOKED**. All evidence of Respondent's licensure shall be immediately returned to the Commission within 30 days of this Order.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 17th DAY OF June, 2016.

MISSOURI REAL ESTATE COMMISSION



Joseph Denkler, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



REAL ESTATE COMMISSION
Petitioner,

v.

MARKEL BOYD FLEMING
Respondent,

No. 16-2268

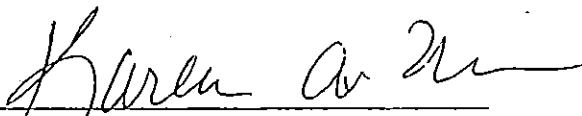
DEFAULT DECISION

On January 27, 2016, Petitioner filed a properly pled complaint seeking to discipline Respondent. Respondent was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on February 18, 2016.

More than thirty days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo (Supp. 2013), we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on March 31, 2016.



KAREN A. WINN
Commissioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JAN 27 2016

MISSOURI REAL ESTATE COMMISSION)

3605 Missouri Boulevard)

P.O. Box 1339)

Jefferson City, MO 65102,)

Petitioner,)

v.)

MARKEL BOYD FLEMING)

5085 E. Farm Road 194)

Rogersville, MO 65742)

417-883-9557)

Respondent.)

ADMINISTRATIVE HEARING
COMMISSION

Case #: _____

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the Attorney General of the State of Missouri, and for its cause of action against Respondent, states the following:

1. The MREC is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo,¹ for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, Real Estate Agents, Brokers, Appraisers, and Escrow Agents.

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

2. Respondent, Markel Boyd Fleming ("Fleming"), holds a license as a real estate Inactive Salesperson, license no. 1999112139, which was issued by the MREC on December 15, 1997, and expires on June 30, 2016. Fleming's license is currently suspended pursuant to § 324.010 RSMo Cum. Supp. 2013 for failure to pay and/or file Missouri income taxes.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045, and 339.100, RSMo Cum. Supp. 2013.

4. On or about January 7, 2015, the MREC received notice from the Missouri Department of Revenue that Fleming was not in compliance with § 324.010 RSMo Cum. Supp. 2013, which requires the suspension of a professional license for individuals who have failed to file or pay state taxes.

5. On January 7, 2015, the MREC sent Fleming a letter by certified mail to 5085 E. Farm Road, 194, Rogersville, Missouri 65742, his address registered with the MREC, explaining Fleming's noncompliance and instructing his how to resolve the issue with the Department of Revenue. The letter also stated that Fleming's license would be suspended on April 4, 2015.

6. The MREC received the green return receipt of mailing with Fleming's signature on January 15, 2015, indicating Fleming received the January 7, 2015 letter.

7. Fleming's license was suspended by operation of law on March 28, 2015.

8. On or about April 8, 2015, the MREC sent Fleming a letter by certified mail to his address registered with the MREC stating that Fleming's license was

suspended by operation of law and requesting he return his license to the MREC within ten days of the date of the letter. The MREC received the green return receipt with Fleming's signature on April 14, 2015, indicating he received the April 8, 2015 letter. The MREC's April 8, 2015 letter was also re-sent to Fleming in a letter dated May 12, 2015.

9. The MREC received no response from Fleming to the January 15, 2015 letter, the April 8, 2015 letter, or the May 13, 2015 email. Fleming's license remains suspended.

10. Fleming has failed to surrender his licenses as requested by the MREC since his suspension began on April 4, 2015.

11. Section 324.010, RSMo Cum. Supp. 2013, states in part:

All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to . . . chapters 324 to 346, RSMo, shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy....

12. Section 339.100.2, RSMo Cum. Supp. 2013, provides in relevant part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or his individual or entity license for any one or any combination of the following acts:

.....

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

.....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

13. Cause exists to discipline Fleming's licenses pursuant to § 339.100.2(15), RSMo Cum. Supp. 2013, because Fleming has failed to respond in writing to the MREC's written requests or inquiries, in violation of 20 CSR 2250-8.170(1), which provides in relevant part:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

14. Section 339.040, RSMo Cum Supp. 2013, establishes the criteria that must

be established to hold a real estate salesperson's license and states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, . . . whose officers, . . . present, satisfactory proof to the commission that they:

.....

- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public:

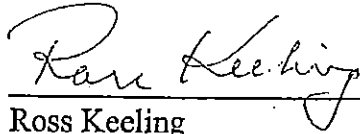
15. Fleming's failure to respond in writing to the MREC's written requests or inquiries is evidence that Fleming is not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public. Therefore, there would be grounds under § 339.040.1, RSMo Cum. Supp. 2013, for the MREC to deny a license to Fleming, and thus provides cause for discipline under § 339.100.2(16), RSMo Cum. Supp. 2013.

16. Fleming's conduct, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith, incompetence, misconduct, and/or gross negligence, providing cause for discipline under § 339.100.2(19), RSMo Cum Supp. 2013.

WHEREFORE, Petitioner prays this Administrative Hearing Commission to conduct a hearing in this case pursuant to sections 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of law that the Petitioner may discipline Respondent Markel Boyd Fleming's real estate Inactive Salesperson license under Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

CHRIS KOSTER
Attorney General

A handwritten signature in cursive script, reading "Ross Keeling", is written over a horizontal line.

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